

1882-010 Chancery Causes: Leah J. R. Burgan vs. David H. Burgan
Lee Co.

Noe, Bailey, Thompson, Hall

CA-Divorce

To the Honorable John H. Kelly
Judge of the Circuit Court of Lee
County:

The Bill of Complaint of Leah
J. R. Burgan humbly Complaining
respectfully represents to your
Honor that she was married
to her husband David H. Burgan
about the day of 187
~~and~~ they and they lived together
as husband and wife for about
months in Lee County Virginia.
Your Oratrice alleges that during the
short time they lived together the
said David H. Burgan treated her
cruelly and that she had reason-
able apprehension of bodily harm
from him and that he frequently
abandoned and deserted her during
the time and finally abandoned
her finally and forever and has
not lived with her for the last
seven years he having abandoned
her that length of time and she
alleges that they have not lived
together or cohabited as husband
and wife during that length
of time. Your Oratrice further

alleges that they had one Child a Son which was born after the Said David H. Burgan abandoned her the last time and she has had the Care and maintenance and Custody of Said Child until now. Your Petitioner further Claims that as she has raised and taken Care of Said Child during his infancy and up this time when he can be of some Service to her without any assistance whatever from her Said husband that she should still be allowed the Custody of him.

She further alleges that whilst they lived together the Said David H. Burgan did not provide any thing for her Comfort or Support nor has he done so at any time since. She further alleges that both she & her husband reside in Lee County Virginia.

Your Petitioner being without an adequate remedy at law and only redressable in a Court of Equity her prayer therefore is that the Said David H. Burgan be made

the party defendant to this bill
and that he be summoned and
required to answer the alle-
gations of the same on oath and
that upon a final hearing in
this cause that a decree of Di-
vorce from the bonds of matrimony
be entered in this cause and that
your Oratrix be allowed to retain
the custody of their minor child
and that she recover of the
defendant the costs of this suit
and such other further and
general relief be extended to
her as may be consistent with
equity and justice and be suited
to her case. May the Comeths.
writ of Spem. issue directed &c.

David Miller
for Complt.

Leah J. R. Burgan

vs. Bill in Chy.

| | |
|-------|----------------|
| C | 4.48 |
| Court | 3.75 |
| A | 15.00 |
| B | 1.50 |
| Wit | 1.50 |
| | <u>\$25.23</u> |

David H. Burgan

1882. Febry Spia Ex. R. A.

" Mr. V. A. Comd. &
Set for hearing by
Plaintiff.

" Mr. Courtiered
1. Aug. Recd final

1880. to 1890.

B.

Leah J. R. Burgin

Peff.

vs.

David H. Burgin

Deft.

In lby

This cause came on to be heard this day on the bill of the Peff. and the deposition of said day returned and was argued by counsel. And on mature consideration of the evidence as shown by a written opinion of the court filed among the papers of the cause it appears to the court that a cause of divorce is shown. It is therefore adjudged ordered and decreed that that the bond of matrimony now existing between Peff and Deft be and the same is hereby dissolved, and the Peff is allowed the privilege of again marrying, but that privilege is denied the said Deft. And the cause is ordered to be stricken from the docket.

Leah J. R. Burge

{ Deane of Birney

David H. Burge

Entered Page 274.

J. A. L. Hyatt

clerk

Enter this

J. A. K.

apt 6/82

Mr. David H. Burgin

You will take notice that at the law office
of H. J. Morgan in Jonesville on the 22nd day of May 1882 I will
proceed to take the depositions of John W. Bailey, Nimrod Hae
Isaac Thompson & others, to be read as evidence on my behalf
in a certain Suit now pending in the circuit court of Lee
County, in which I am plaintiff and you are defendant

Leah J. R. Burgin

May 8th 1882

Leah J. H. Burge

as } Notice May 22/82

David H. Burge

Executed

J. Mills J. S.

Leah J. R. Burgin

Plff

vs.

David H. Burgin

Def

In Chancery in Circuit

Dist. Court Lee County Virginia

The deposition of Nimrod Kae, John W. Bailey and

taken pursuant to notice hereto attached at the law office of H. J. Morgan in the town of Fauquier on the 22 day of May 1882 which are intended to be read as evidence on the part of the plaintiff in the above styled cause now pending in the Circuit Court Lee County Va.

The said Nimrod Kae being duly sworn deposes and says I am acquainted with the Plaintiff and the defendant in this cause, and I know the fact that they separated about seven years ago and have not since lived together as man and wife, before they separated from each other, I remember to have passed the house where they lived and stopped in a short while I saw nothing going on and do not now remember that I heard them talk with each other.

The defendant is regarded by those who know him well, as being trifling and too lazy to work, in order to provide for himself or his family, but I cannot say as to my own knowledge whether he provided

Nimrod Kae 1 day as witness 50¢
Nimrod Kae 1 day as witness 50¢

for his own family or not,
But from what I know of his
Character & habits, I do not think
he would provide for himself or
any one else, and had they contin-
ued to ~~have~~ lived together, I think
his wife would have been forced
to support herself & him too.
And further this deponent ~~says~~ ^{with} not.
Nimrod ^{his} ~~mark~~ ^{Nag}

John W. Bailey an other witness of
lawful age being duly sworn deposes
and says.

The Plaintiff and Defendant were married,
to each other about January 1873, and
about 18 months thereafter the Plaintiff
gave birth to a son, which is now
living and is at my house.

The Plaintiff is my Daughter, and soon
after their marriage, the deft and I agreed
to make a crop together and we accordingly
pitched our crop, but during the entire
season I was unable to get a single day
work out of him, towards the close of the
crop season I cut him off a portion of
the crop, with a view to try to get him
to work some, but failed to succeed.

and his crop was about to be lost,
when his Father sent his younger brother
and I furnished some boy help &
the crop was made through our joint
efforts, & with his assistance, during
this time and for a little more than
one year the Plff & Dft, lived in my
house with me, and about the month
of February I concluded to put them
in a house to themselves on my land,
and I accordingly did so. and after
they had been living to themselves
about one month, my daughter
returned to me declaring that
the Dft refused to provide in
any way for her, and that she
would no longer live with him
because he would not provide
any thing upon which to live, about
this time his Father & Mother came over
and proposed to take them home
with them and proposed to try to
get the Dft, to do something to make
a support for himself & wife, I then
persuaded my daughter to go with him
and they accordingly went over in to
the Docut, and remained there until
about the month of July following

When my daughter again returned to my house in a helpless condition, saying at the same time that she was forced to return home as starved and that the deft. would do nothing to make a support.

A few days after the Plaintiff came to my house, the defendant also came and seeing the condition of the Plff. I asked the deft. if he was going to procure competent medical attention and assistance at the expected confinement of his wife. but he refused to and did not give her any attention during her confinement, and I was forced to and did procure for her the necessary attention and have defrayed the expenses ^{thereof} out of my own means, and now although nearly eight years have elapsed he has not lived with or provided any thing for the Plaintiff or her child. The plaintiff has therefore been deserted and abandoned by the defendant for nearly eight years, and during that period they have not lived together or associated or cohabited together as man and wife.

And the Plff. and her child ^{has} been supported by her own efforts, together

with what I have aided her from
that time to the present, and are
still being supported by me, and
should I live I expect to raise
the child.

During the time the Off. & Sgt. lived
on my premises and in my house
I do not know of his furnishing any
thing upon which to live and support,
but it is true that some provision
was furnished besides what I furnished
but it was understood that such was
furnished by his Father.

And further this witness saith not.
J. W. Bailey

State of Virginia

Lee County to wit

It is hereby Certified that the
foregoing depositions of Amos
Lee and John W. Bailey were
taken before me, sworn to and
subscribed by them at the time
and place and for the purposes
mentioned in the Caption

Witness my hand this May 22^d
1883,
J. L. Hyatt

Clerk, &c

Recd of Aust, Comm. #2.25-
Amos Lee Wit
#2.50
#2.75-

Leak J. R. Burgin

vs Deft,

David H. Burgin

Filed May 22 1882

J. A. Hyatt
Clerk

Comme fees \$2.50

W. Vac. Writ. .50

\$2.75

Mr David H. Burgen

Sir

You will take notice that on the
5th day of August 1882 at the law office of H. J.
Morgan in the town of Jonesville I will proceed
to take the depositions of Isaac Thompson and Hargrath
Hall which are intended to be used as evidence
on my behalf in the chancery suit now pending
in the circuit court of Lee County in which I
am plaintiff and you are defendant

Sam J. R. Burgen

By Ayres & Morgan

Aug 5 - 1882

Leas J. R. Bergen

vs } notice

David H. Bergen

I accept legal service
of the within notice
David H. ^{his} Bergen
month

Leas J. R. Burgin Peff
vs. } In Chancery
David H. Burgin Deft

The deposition of Isaac Thompson and Hasekiah Hall taken pursuant to notice at the office of Starnett J. Morgan in Jonesville on the 5th day of August 1882 which are intended to be read as evidence on the part of the Peff in the above styled suit

The said Thompson being duly sworn Says -
Not long after the birth of the Peff's child perhaps in the month of October or November thereafter, the defendant David H. Burgin, came to where I then and now live in Harland County Ky, and informed me that his wife had left him and was then living at the house of her father and that he wanted me and others to go with him and take her away from her father, by force if necessary, and Frank Dean and myself agreed to come across the mountain with him for that purpose, and we accordingly did so come, before starting however, the said David H. Burgin procured some whiskey in the neighborhood, of which we drank pretty freely as we came over - and before arriving at

the house of John W. Baileys' the father
of the Plaintiff, said David H. Benin
informed this witness and said
Frank Dean that he wanted us
to go to the house of John W. Bailey
and to bring his wife & child, by
force if necessary, out into the
side of the mountain, where he
would wait for us, and that
we would then each do what
we pleased to her, and then turn
her loose to go where she pleased,
witness ^{then} understood left, to mean
by the language which he then
used, that he would first have
carnal sexual intercourse with
the Plff, and then turn her over
to said Dean & myself, to be
similarly treated if we so proper,
but I informed left, that I would
have nothing to do in the matter
upon the terms proposed, but at the
same time stated to the left, that
said Dean & myself would go
to the house of the said John W.
Baileys, & if he was detaining the
Plff, there against her will, that
we would cut her in coming

To the left, On arriving at the house of John W. Bailey and after having informed him of our object, he called the Plff into the room where we were and said to us, "Now talk to her & if she desires to go, "I have nothing to say, take her along" after talking to the Plff, I became satisfied that her Father was not detaining her, and I concluded to have nothing further to do with the matter and did not.

During the conversation then had with the Plff, she said that the defendants Conduct and treatment, to her, had been such, that she could not and would not longer live with him.

And further this witness saith not.
Teste, J. A. Hyatt Isaac ^{dis} Thompson
mark

The said Desekiah Hall being sworn says I live in the neighborhood of the said John W. Bailey & just before Isaac Thompson & Frank Dean got to the house of said Bailey on the occasion referred to by said Thompson in the foregoing

deposition, I fell in with them and
Defendant David H. Bergin, when the
said David H. Bergin informed me
of their object and requested me
to go along with Thompson & Dean, &
I consented so to do, & did do so,
the deft then said to us, that he
wanted us to go to the house of
John W. Baileys where his wife was
and to take her by the hair of
the head, if necessary, and bring
her out into the mountain where
he would wait for us, and when
we brought her there, he would
then have carnal intercourse
with her and then turn her
over to Thompson, Dean and my-
self to be treated in the same way
if we saw proper, and ^{then} to turn her
loose. we ~~did~~ then ^{went} to the said
house, as detailed by Mr. Thompson,
when the facts as stated by him
transpired, and in the manner
detailed by him.

And further this witness sayth not.

Hezekiah Hall

Virginia

Lee County to wit.

J. J. Almyerth Comes
in Chcy for the County Court of
said County do hereby certify
that the foregoing depositions of
Isaac Thompson and Heskiah Hall
were taken before me at the time
and place, mentioned in the caption,
sworn to ^{before me} and subscribed by them
in my presence, Given under
my hand this 5th day of August 1882,

J. J. Almyerth
Clerk

Leah. J. R. Burman
vs. W. J. Burman
Carrick St. Burman

Filed. Aug. 5th 1862
J. A. G. Hyatt
Clerk

Comers fee \$1.50
Witnesses. 1.00
Plaintiff

Leah J. P. Durgan's David H. Durgan.

In this case I have had much difficulty. The husband is proven to have been utterly worthless. First residing with his wife's father, he proves so idle that with every means put into his command he would not improve his opportunities, ~~and~~ make any thoughtful provision for himself or wife. Being put into possession of a home on the lands of his wife's father, he is so utterly improvident as to make it necessary for the father-in-law to take his wife home and provide for her. This looks, however, like desertion by the wife. And no more than this appearing, I could not hold, that this was a wilful desertion by the husband, tho' he might continue for years, to be idle and worthless and to make no provision for the wife. Still our law imposes the hard duty on the wife of supporting herself, if she can & the husband too, if she can & will.

1 Bishop, 792

But this case does not stop here. If the witnesses in this case are credible, the defendant contemplated, and attempted to execute a wrong so shocking, upon his wife, as to make the Court decide, if practicable, to sever his connection with his wife & even with society. He is represented as desiring and endeavoring to obtain the services of three gentlemen to bring his wife to him in the mountains, that he might there gratify his lust upon her: and then turn her over to them to be prostituted. I can hardly credit the testimony. — It stands uncontradicted however, & I do not suppose I can discredit it upon the naked ground of its extreme improbability.

Taking the testimony to be true, the wife, without her fault has left the house of her husband, and is seeking better support at her father's. The husband does not take steps to provide for her. He does not seek to make their dwelling together possible. As I have said this is not sufficient. But cannot an act be done by the husband, while they are thus actually apart, that will convert their separation into ~~a~~ wilful desertion by him?

Mr Bishop says, in such a case the true view, "Desertion, where the parties are apart, commences with the intent in the mind of the accused person permanently to abandon cohabitation with the other."

The desertion must be wilful. Now it is not to be inferred from the evidence that the husband in this case, at the time his wife returned to her father's, neglected to provide for his wife with an intent to compel her to leave. If he did his intent was both malicious & wilful. 1 Bish. 792. ~~He~~

But after the wife has gone to her father's the conduct of the ~~plaintiff~~ defendant changes. He seems to have gone into Kentucky. He returns with three other persons, whom he endeavors to persuade to aid him in obtaining forcible possession of his wife, for the sake of carnal gratification, first by himself, and then by the other men and then to cast her adrift. Is there not here a maliciously wilful purpose to desert finally & forever, the plf.? His proposition is one that shows as clearly as it can that he contemplates not only desertion, but ruin: for he not only says he will cast her adrift, but what he proposes could never be thought of by one, who contemplated living again with his wife.

I come then to this conclusion. The plaintiff's way
not only justified, but in her condition ~~is~~ compelled
to go to her father.

That while, because of the defendant's misconduct
she was thus bound to absent herself from him, he
deliberately determined to ruin and then desert
her.

He fails to perpetrate the ruin, but he
does desert her & has continued that desertion
for 8 years.

The circumstances of his desertion appear
to be both wilful and malicious.

Therefore give usual decree for divorce

I have been thus particular, because I would
regret greatly to make a precedent of
divorcing a man because he was
worthless. It is a part of the marriage
vow, to take the husband for better ^{or} for worse.
And so, if the husband proves ever so worthless this alone does not
give a right to divorce.

J. A. Kelly,
Sept. 6. 1882

Dungan
10.
Dungan

Opinion of Court
Granting Divorce

Filed Sept. 6/82

The Commonwealth of Virginia,

To the Sheriff of Lee County - - - Greeting:

We Command you to Summon

David H. Burgan

To appear at the Clerk's office of the Circuit Court of Lee, at the Court-House, on the first Monday in

February next, being rule day to answer a bill in Chancery, exhibited in our said Court against

him by

Leah J. R. Burgan

And have then there this writ. Witness JOHN A. G. HYATT Clerk of our said court at the Court-House
this *25th* day of *January* 1882; in the *106* year of the Commonwealth.

J. A. Hyatt CLERK.

Miller

Leah J. P. Burgan

vs. Spain Chey

David H. Burgan

To Febry Rules 1882.

Executed by deliver
ing an office copy

To the Clerk of the Court
25/882

J. J. Ely, C. S.

for J. S. Ely

S. L. P.

And have then there this with witness JOHN A. G. HATTE Clerk of our said Court at the Court House
year of the Commonwealth 1882 in the day of this

CLERK